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OFFICE OF THE STATE AUDITOR
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AUDITOR**



PURCHASE LAW

UPDATE

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PURCHASE LAW UPDATE

This is an update of Mississippi purchasing laws. This update includes a “Legislative Update” and a “Purchase Law Overview”. The “Legislative Update” is a brief of purchase law related legislation passed by the Mississippi Legislature during its 2002 regular session. The “Purchase Law Overview” presents the actual text of selected statutory provisions.

LEGISLATIVE UPDATE

 **House Bill 5 (effective July 1, 2002) revised state law related purchasing. Revisions were made to § 31-7-13 (the main purchasing bidding law) are as follows:**

1. Sub-section (a) increased the amount not requiring bidding to purchases of not more than \$3,500.00.
2. Sub-section (b) increased the amount requiring bid quotes to purchases of over \$3,500.00 to not more than \$15,000.00.
3. Sub-section (c)(i) increased the amount requiring advertisement for bids to purchases of over \$15,000.00.
4. Sub-section (c)(ii) changed language for clarification.
5. Sub-section (j) added a requirement for the State Auditor to prepare a report of state agency emergency purchases for legislative committees.
6. Sub-sections (l) and (m)(xxviii) add authority and exemption from bidding for public hospitals lease purchases of equipment and services.

 **House Bill 1562 (effective July 1, 2002) revised Section 31-5-25 and 31-5-33 to change the percent retainage requirement to 5 % of payments on certain construction contracts of \$250,000 or more, and 5 % on all payments on such contracts with sub-contractors until the contract is 50 % complete. The retainage is reduced to 2 ½ % of payments after the 50 % completion point. The bill also requires monthly reports of payments by contractors to sub-contractors.**

Copies of Senate Bills may be received by contacting the Senate Docket Clerk at (601) 359-3229. Copies of House Bills may be received by contacting the House Docket Room at (601) 359-3358. Copies of all bills may be accessed at www.ls.state.ms.us.

PURCHASE LAW OVERVIEW

The following overview begins with a “Table of Contents” to provide the location of specific purchase laws. The notation “New” by a table of content item indicates a new or changed provision.

Headings have been assigned to untitled sub-sections of the legal text for identification purposes. Notations are provided for reference, emphases, and clarification. Underlines and bold print are for emphases. *Italics* print indicates new language.

The current “Purchase Law Update” may be found at the Mississippi State Auditor’s web site www.osa.state.ms.us by selecting “Technical Assistance” then “Purchase Law Summary”. Actual text of the Mississippi code may be found at the Secretary of State’s web site at www.sos.state.ms.us. Mississippi Attorney General’s opinions may be found at www.ago.state.ms.us.

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D E F I N I T I O N S

ENTITY DEFINITIONS

§ 31-7-1. The following terms are defined for the purposes of this chapter to have the following meanings:

Purpose - To Clarify Law

(a) "**Agency**" shall mean any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof.

(b) "**Governing authority**" shall mean boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, commissioners and boards of trustees of any public hospitals, boards of trustees of public library systems, district attorneys, school attendance officers and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof, including commissions, boards and agencies created or operated under the authority of any county or municipality of this state. The term "governing authority" shall not include economic development authorities supported in part by private funds, or commissions appointed to hold title to and oversee the development and management of lands and buildings which are donated by private individuals to the public for the use and benefit of the community and which are supported in part by private funds.

(c) "**Purchasing agent**" shall mean any administrator, superintendent, purchase clerk or other chief officer so designated having general or special authority to negotiate for and make private contract for or purchase for any governing authority.

(d) "**Public funds**" shall mean and include any appropriated funds, special funds, fees or any other emoluments received by an agency or governing authority.

(f) The term "**Office of General Services**" shall mean the Department of Finance and Administration. Provided that when purchases are made for the Legislature or functions under its jurisdiction, it shall mean the Legislative Budget Office.

ITEMS COVERED DEFINITIONS

**Note - Commodities Include Software A.G. 2/29/88, Jeremy J. Eskridge
- Commodities excludes "commodities for resale"**

(e) The word "**commodities**" shall mean and include the various commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state and governing authorities, **but not commodities purchased for resale or raw materials converted into products for resale.**

(i) The term "**equipment**" shall be construed to include: automobiles, trucks, tractors, office appliances and all other equipment of every kind and description.

(ii) The term "**furniture**" shall be construed to include: desks, chairs, tables, seats, filing cabinets, bookcases and all other items of a similar nature as well as dormitory furniture, appliances, carpets and all other items of personal property generally referred to as home, office or school furniture.

(g) "**Construction**" shall mean the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public buildings or other public real property.

(h) "**Purchase**" shall mean buying, renting, leasing or otherwise acquiring.

EMERGENCY PURCHASE DEFINITION

Note - See Sec. 31-7-13 J & K for Procedure

(i) The term "**emergency**" shall mean any circumstances; caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.

OTHER DEFINITIONS

All definitions essential to purchase law understanding are not listed under the definition law, Section 31-7-1. The following "other definitions may be found as referenced.

Competitive Bid - See Section 31-7-13 (b)

Lease Purchase Equipment - See Sections 31-7-13 (e) & 31-7-10

Minority - See Section 31-7-13 (s)

M A I N P U R C H A S E L A W

SCOPE OF LAW

- Purpose** - **Who and What The Law Applies To**
Notes - **Excludes Garbage, Sewage & Solid Waste Contracts - See Sec. 31-7-13 (m) (xxii)**
- **Special Solid Waste Procedure - See Sec. 31-7-13 (r)**

§ 31-7-13. All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

(a) BIDDING PROCEDURE FOR PURCHASES NOT OVER \$3,500.00

- Purpose** - **Clarify No Bids Required**

NEW Purchases which do not involve an expenditure of more than **Three Thousand Five Hundred Dollars (\$3,500.00)**, exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. Provided, however, that nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of **Three Thousand Five Hundred Dollars (\$3,500.00)** or less.

(b) BIDDING PROCEDURE FOR PURCHASES OVER \$3,500.00 BUT NOT OVER \$15,000.00

- Purpose** - **Two Quote Bids Required**
Note - **Must Document Best Bids - See Sec. 31-7-13 (d)**

NEW Purchases which involve an expenditure of more than **Three Thousand Five Hundred Dollars (\$3,500.00)** but not more than **Fifteen Thousand Dollars (\$15,000.00)**, exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendors letterhead or identifiable bid form and signed by authorized personnel representing the vendor. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

(c) BIDDING PROCEDURE FOR PURCHASES OVER \$15,000.00

Purpose - Advertising For Bids Required

Advertising

- Notes**
- **If No Bids Received, Must Rebid** A.G. 9/23/92 William R. Schneller
 - **May Not Count Day Of Publication Or Day Of Opening When Calculating Bid Opening Date** A.G. 9/12/88 Pete McGee
 - **Designee May Open Bid** A.G. 12/15/93, Thomas H. Dyson

NEW (i) PUBLICATION REQUIREMENT.

Purchases which involve an expenditure of more than ***Fifteen Thousand Dollars (\$15,000.00)***, exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifteen Thousand Dollars (\$15,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to or provide electronic notification to the main office of the Mississippi Contract Procurement Center that contains the same information as that in the published notice.

Note	<u>Notice Information</u>
- Address:	Miss. Contract Procurement Center 1636 Popps Ferry Road, Suite 229 Biloxi, MS. 39532
- Telephone Number:	(228) 396-1288
- Fax Number:	(228) 396-2520
- Email:	MPROGOFF@MSCPC.COM
- Web Site:	WWW.MSCPC.COM

NEW (ii) BIDDING PROCESS AMENDMENT PROCEDURE

If all plans and/or specification are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within ***two (2) working days*** of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working DAYS after the date of the addendum.

(iii) FILING REQUIREMENT.

In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to who such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) Specification Restrictions

- Notes**
- **May Specify Trade-in, Lease Purchase, Or Other Best Bid Information**
 - **Software Must Be Bid, Specifications May Be Restrictive Since It Is Not Equipment**
 - **May Not Waive Specifications That Affect The Competitiveness Of The Bid Process**
 - **May Specify Used Equipment By Maximum Age, Miles, Hours, etc.**

Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. Provided, however, that should valid justification be presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.

(d) LOWEST AND BEST BID DECISION PROCEDURE**(i) DECISION PROCEDURE.**

- Notes**
- **Best Bid Documentation Requirement - All Purchases**
 - **Only Low Bidder May Lower Bid A.G. 9/10/79 C. Ray Scales, Jr.**

Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) CONSTRUCTION PROJECT NEGOTIATIONS AUTHORITY.

- Notes**
- **Best Bid Negotiations - Construction Only**
 - **May Negotiate Specifications - A.G. 9/19/97 Danny Guice, Jr.**

If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) LEASE PURCHASE AUTHORIZATION

- Purpose** - **An Authority To Lease Purchase**
Notes - **Not An Exemption From Bidding**
- **Not For School Buses A.G. 4/23/01 Richard L. Thompson**
- **May Refinance A.G. 3/31/93 W. J. Gamble III**

Definition

For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition.

Authority

Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e).

Alternative Financing Provision

Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof.

Maximum Interest Rate (11%)

No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and

Maximum length of Lease

the term of such lease-purchase agreement shall not exceed the useful life of property covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5),

Lease Dependency Clause (canceled if not budgeted)

and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8).

Record Requirement

Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10 (13).

State Agency Limit (does not limit governing Authorities)

However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars (\$10,000.00) by a single lease-purchase transaction.

Tax Exemption

All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) ALTERNATE BID AUTHORIZATION - Governing Authorities Only**Purpose - Authority and Procedure**

When necessary to ensure ready availability of commodities for public works the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder, for reasons beyond his control, cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

(g) CONSTRUCTION CONTRACT CHANGE AUTHORIZATION**Purpose - Authority To Make****Notes - Must Record On Minutes**

- **Can't Make Retroactive** A.G. 7/15/93 C. R. Montgomery
- **Can't Allow Prior To Contract** A.G. 1/25/89 Tim Hancock

In the event a determination is made by an agency or governing authority after construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes.

Delegation Of Authority To Change Contract

In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) PETROLEUM PURCHASE ALTERNATIVE**Purpose - Alternate Procedure****Note - See "Fuel Management Systems" - Sec. 31-7-13 (q)**

In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section. If two (2) competitive written bids are not obtained the entity shall comply with the procedures set forth in paragraph (c) of this section. In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) ROAD CONSTRUCTION PETROLEUM PRODUCTS PRICE ADJUSTMENT CLAUSE AUTHORIZATION**Purpose - Alternate Procedure**

Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance. Such industry-wide index shall be established and published monthly by the State Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) STATE AGENCY EMERGENCY PURCHASE PROCEDURE**Purpose - No Time For Bid Procedure****Notes - For Emergency Definition See Sec. 31-7-1 (f)****- Commodities And Repairs Only (Construction Only As A Repair)**

NEW If the executive head of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (I) a statement under oath certifying the conditions and circumstances of the emergency, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable. **On or before September 1 of each year, the State Auditor Shall prepare and deliver to the Senate Fees, Salaries and Administration Committee, the House Fees and Salaries of Public Officers Committee and the Joint Legislative Budget Committee a report containing a list of all state agency emergency purchases and supporting documentation for each emergency purchases.**

(k) GOVERNING AUTHORITY EMERGENCY PURCHASE PROCEDURE

- Purpose** - No Time For Bid Procedure
Notes - For Emergency Definition See Sec. 31-7-1 (f)
 - Commodities And Repairs Only (Construction Only As A Repair)

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

(l) HOSPITAL PURCHASE OR LEASE AUTHORIZATION

- Purpose** - Lease or Purchase Obligation Authority
Note - See related laws Sec. 31-7-13 (m)(xxviii) & (m)(x) and Sec. 31-7-38

- NEW** **(i)** The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.
- NEW** **(ii)** In addition to the authority granted in subparagraph (i) of this paragraph (l), the commissioners or board of trustees are authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

EXCEPTIONS FROM BIDDING REQUIREMENTS.

- Purpose** - To Allow Exceptions To Bidding Under Special Circumstances
Notes - See Sec. 31-9-9 For Exception On State Surplus Property Purchases
 - See Sec. 31-7-1 (e) For Exception On Commodities Purchased For Resale

(m) Excepted from bid requirements are:

(i) PURCHASING AGREEMENTS APPROVED BY DEPARTMENT.
 [STATE CONTRACTS - See Sec 31-7-12 For Particulars]

Purchasing agreements, contracts and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) OUTSIDE EQUIPMENT REPAIRS. [Except Entire Assemblies]

Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need for such total component replacement is known before disassembly of the component; provided, however, that invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefor shall be required for the payment for such repairs.

(iii) IN HOUSE EQUIPMENT REPAIRS. [Except Entire Assemblies]

Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.

(iv) RAW GRAVEL OR DIRT.

Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.

(v) GOVERNMENTAL EQUIPMENT AUCTIONS.

Motor vehicles or other equipment purchased from a federal or state agency or a governing authority at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority, under the exemption authorized by this paragraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(vi) INTERGOVERNMENTAL SALES AND TRANSFERS. [By Negotiation Only]
 [Allows Donations - A.G. 12/12/97 John B. Toney]

Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency of another state. Nothing in this section shall permit such purchases through public auction except as provided for in paragraph (v) of this section. It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sale at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) PERISHABLE SUPPLIES OR FOOD. [Perishables Only A.G. 3/19/92 Wilbur O. Colom]

Perishable supplies or foods purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.

(viii) SINGLE SOLE SOURCE ITEMS.

Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of such certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In such situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

(ix) WASTE DISPOSAL FACILITY CONSTRUCTION CONTRACTS. [Proposals Required]

Construction of incinerators and other facilities for disposal of solid wastes in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; provided, however, in constructing such facilities a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) HOSPITAL GROUP PURCHASE CONTRACTS.

Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.

(xi) INFORMATION TECHNOLOGY PRODUCTS. [ITS Contracts]
[Renamed - Previously Central Data Processing Authority (CDPA)]
[Agencies must purchase under ITS rules and Sections 25-53-5 & 25-53-123]
[Junior Colleges Are Not Subject To ITS Agency Rules, A. G. 3/16/01 David Litchliter]
[ITS Offers An "Express Products List" For Quick Limited Purchases]

Purchases of *information technology products* made by governing authorities under the provisions of purchase *schedules, or* contracts executed or approved by the Mississippi Department of Information Technology Services *and designated for use by governing authorities.*

(xii) ENERGY EFFICIENCY SERVICES AND EQUIPMENT.

Energy efficiency services and equipment acquired by school districts, junior colleges, institutions of higher learning and state agencies or other applicable governmental entities on a shared-savings, lease or lease-purchase basis pursuant to Section 31-7-14.

(xiii) MUNICIPAL ELECTRICAL UTILITY SYSTEM FUEL.

Purchases of coal and/or natural gas by municipally-owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xiv) LIBRARY BOOKS AND OTHER REFERENCE MATERIALS.

Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, recorders, audio or video equipment, and monitor televisions are not exempt under this subparagraph.

(xv) UNMARKED VEHICLES.

[For Bureau of Narcotics And Department of Public Safety Only]

Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2).

(xvi) ELECTION BALLOTS.

Purchases of ballots printed pursuant to Section 23-15-351.

(xvii) MULTICHANNEL INTERACTIVE VIDEO SYSTEMS.

From and after July 1, 1990, contracts by Mississippi Authority for Educational Television with any private educational institution or private nonprofit organization whose purposes are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multichannel interactive video systems (ITSF) in the school districts of this state.

(xviii) PURCHASES OF PRISON INDUSTRY PRODUCTS.

From and after January 1, 1991, purchases made by state agencies or governing authorities involving any item that is manufactured, processed, grown or produced from the state's prison industries.

(xix) UNDERCOVER OPERATIONS EQUIPMENT. [Law Enforcement Only]

Purchases of surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.

(xx) JUNIOR COLLEGE BOOKS FOR RENT.

Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.

(xxi) CERTAIN SCHOOL DISTRICT PURCHASES.

Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities.

(xxii) GARBAGE, SOLID WASTE AND SEWAGE CONTRACTS.
[Proposals Required - Sec. 31-7-13 (r)]

Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.

(xxiii) MUNICIPAL WATER TANK MAINTENANCE CONTRACTS.

Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or more years.

(xxiv) PURCHASES OF MISSISSIPPI INDUSTRY FOR THE BLIND PRODUCTS.

Purchases made by state agencies or governing authorities involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

(xxv) PURCHASES OF STATE ADOPTED TEXTBOOKS.

_____ Purchases of state-adopted textbooks by public school districts.

(xxvi) CERTAIN PURCHASE UNDER THE MISSISSIPPI MAJOR ECONOMIC IMPACT ACT.

Contracts entered into pursuant to the provisions of Section 57-75-9 (2) and (3).

(xxvii) USED HEAVY OR SPECIALIZED MACHINERY OR EQUIPMENT FOR INSTALLATION OF SOIL AND WATER CONSERVATION PRACTICES PURCHASED AT AUCTION.

Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in Sections 69-27-331 through 69-27-341. Any purchase by the State Soil and Water Conservation Commission under the exemption authorized by the subparagraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(xxviii) HOSPITAL LEASE OF EQUIPMENT OR SERVICES.

NEW Leases by hospitals of equipment or services if the leases are in compliance with paragraph (l)(ii).

(n) TERM CONTRACT AUTHORIZATION.**Purpose - Contract For Unlimited Purchases****All Contracts For The Purchase Of:****General Term contracts**

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the contract.

Term Contracts With Price Adjustment Clauses

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

(o) PURCHASE LAW VIOLATION PROHIBITION AND VENDOR PENALTY.**Purpose - Prohibits Circumvention And Invoice Splitting****Note - Imposes Penalty On Vendor**

No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract of commodity purchased exceeds the authorized amount and the invoices therefor are split so as to appear to be authorized as purchases for which competitive bids are not required. Submission of such invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

(p) ELECTRICAL UTILITY PETROLEUM-BASED EQUIPMENT PURCHASE PROCEDURE.**Purpose - Price Variations Due To Petroleum Content**

When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.

(q) FUEL MANAGEMENT SYSTEM BIDDING PROCEDURE.

- Purpose** - **Bidding This Service, Regardless Of Purchase Amounts**
Note - **See Sec. 31-7-13 (h) For Contracts With Individual Purchases Over \$ 3,500**
- **State Contract May Be Available, See Sec. 31-7-12**

Any governing authority or agency of the state shall before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include but not be limited to publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (s), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of a fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) SOLID WASTE CONTRACTS PROPOSAL PROCEDURE.

- Purpose** - **To Require Proposals For This Service**
Note - **See Sec. 31-7-13 (m) (xxii) For Routine Bid Requirement Deletion**

Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than Ten Thousand Dollars (\$10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (t) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(s) MINORITY SET ASIDE AUTHORIZATION.

- Purpose** - Allow Purchase Set Asides
Notes - Subject To DFA Regulation
- Does Not Include Women

Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and Administration and shall be subject to bid requirements under this section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purposes of this paragraph, the term "minority business" means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic or Native American, according to the following definitions:

- (i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- (ii) "Black" means persons having origins in any black racial group of Africa.
- (iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.
- (iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

(t) CONSTRUCTION PUNCH LIST RESTRICTION.

- Purpose** - Limits Number Of "List Of Problems To Correct"

The architect, engineer or other representative designated by the agency or governing authority that is contracting for public construction or renovation may prepare and submit to the contractor only one (1) preliminary punch list of items that do not meet the contract requirements at the time of substantial completion and one (1) final list immediately before final completion and final payment.

(u) PURCHASE AUTHORIZATION CLARIFICATION.

- Purpose** - Clarification

Nothing in this section shall be construed as authorizing any purchase not authorized by law.

SPECIAL LAWS

STATE CONTRACTS: § 31-7-12

STATE AGENCIES - MANDATORY USE PROVISION

Purpose - State Agencies Must Use State Contracts

(1) Except in regard to purchases of unmarked vehicles made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9(2), all agencies shall purchase commodities at the state contract price from the approved source, unless approval is granted by the Department of Finance and Administration to solicit purchases outside the terms of the contracts; however, prices accepted by an agency shall be less than the prices set by the state contract. Prices accepted by an agency shall be obtained in compliance with paragraph (a), (b) or (e) of Section 31-7-13. It shall be the responsibility of the Department of Finance and Administration to ascertain that the resulting prices provide a cost effective alternative to the established state contract.

GOVERNING AUTHORITIES

Purpose - Optional Use Authority Without Bidding
Note - May Buy From Anyone Selling Exact Same Item For Same Or Less Price
- Does Not Include ITS (EPL) Contracts - See Sec. 31-7-13 (m)(xi)

(2) Governing authorities may purchase commodities **approved by the Department of Finance and Administration** from the state contract vendor, or from any source offering the identical commodity, at a price not exceeding the state contract price established by the Department of Finance and Administration for such commodity, without obtaining or advertising for competitive bids. Governing authorities that do not exercise the option to purchase such commodities from the state contract vendor or from another source offering the identical commodity at a price not exceeding the state contract price established by the Department of Finance and Administration shall make such purchases pursuant to the provisions of Section 31-7-13 without regard to state contract prices established by the Department of Finance and Administration, unless such purchases are authorized to be made under subsection (5) of this section.

Purpose - Clarification Of Governing Authority Optional Use

(3) Nothing in this section shall prohibit governing authorities from purchasing, pursuant to subsection (2) of this section, commodities approved by the Department of Finance and Administration at a price not exceeding the state contract price established by the Department of Finance and Administration.

Purpose - Clarification That Items Not On State Contract Must Be Bid

(4) The Department of Finance and Administration shall ensure that the prices of all commodities on the state contract are the lowest and best prices available from any source offering that commodity at the same level of quality or service, utilizing the reasonable standards established therefor by the Department of Finance and Administration. If the Department of Finance and Administration does not list an approved price for the particular item involved, purchase shall be made according to statutory bidding and licensing requirements. To encourage prudent purchasing practices, the Department of Finance and Administration shall be authorized and empowered to exempt certain commodities from the requirement that the lowest and best price be approved by order placed on its minutes.

Purpose - County/City Contracts May Be Used By Schools

(5) Any school district may purchase commodities from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures pursuant to Section 31-7-13 for purchases of the same commodities. Purchases authorized by this subsection may be made by a school district without obtaining or advertising for competitive bids, and such purchases shall be made at the same prices and under the same conditions as purchases of the same commodities are to be made by the levying authority of the school district under the contract with the vendor.

MOTOR VEHICLE PURCHASES - LOCAL PREFERENCE:**§ 31-7-18**

Purpose - Allows Qualified Local Bid Preference Procedure
Note - Advertising For Bids Is Required

Purchase of certain motor vehicles. In addition to the method of purchasing authorized in this chapter, governing authorities are hereby authorized to accept the lowest bid received from a motor vehicle dealer domiciled within the county of governing authority for the purchase of any motor vehicle having a vehicle weight rating of less than twenty-six thousand (26,000) pounds that shall not exceed a sum equal to three percent (3%) greater than the price or cost which the dealer pays the manufacturer, as evidenced by the factory invoice for the motor vehicle. In the event said county does not have an authorized motor vehicle dealer, said board or governing authority may, in like manner, receive bids from motor vehicle dealers in any adjoining county.

No purchase of a motor vehicle under the provisions of this section shall be valid unless the purchase is made according to statutory bidding and licensing requirements. Provided, however, that the governing authorities may choose to purchase a motor vehicle from the authorized state contract dealer without having to advertise and receive bids therefor.

No purchase shall be made in excess of the approved state contract price by any of the aforementioned governing authorities when such authorities are situated wholly or in part in the county wherein the authorized state contract dealer for a particular item is domiciled.

RECIPROCAL PREFERENCE LAW:**§ 31-7-47**

Purpose - To Allow Miss. Bidders Preference
Note - Limited To Reverse Of Other Bidders State/Local Law
- Out Of State Bidders Of Construction Contracts Over \$ 50,000 Must Provide A Copy Of Their State's Preference Law - Sec. 31-3-21

In the letting of public contracts, preference shall be given to resident contractors, and a nonresident bidder domiciled in a state, city, county, parish, province, nation or political subdivision having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state, city, county, parish, province, nation or political subdivision awards contracts to Mississippi contractors bidding under similar circumstances. Resident contractors actually domiciled in Mississippi, be they corporate, individuals or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state, city, county, parish, province, nation or political subdivision of domicile of the nonresident.

CONSTRUCTION CONTRACTS:

Purpose - **Special Provisions For Construction And Public Works**
Note - **Reference Only, See Cited Laws For Specific Requirements**

1. **A. Performance Bonds - Section 31-5-51** requires bond for faithful performance in an amount not less than the contract.
 - B. Payment Bonds - Section 31-5-51** requires bond for each person for labor and materials used in the job in an amount not less than the contract.
 - C. Liability Insurance - Section 31-5-51** requires general liability insurance prior to any state agency contract in excess of \$5000 or governing authority contract in excess of \$25,000, for coverage in an amount not less than \$1,000,000.
 - D. Publication of Contract Completion - Section 31-5-53** requires publication of job completion to start a one year statute of limitation on performance bond claims.
- 2. Certificate of Responsibility - Section 31-3-21**
Contractors of public projects in excess of \$50,000 must have a "Certificate of Responsibility. All bids for such projects must show the certificate number on the face of the bid envelope.
- 3. Professional Engineering and Architectural Services - Section 73-13-45**
An engineer or architect is required to prepare the specifications and estimates, and to supervise the work of public works contracts in excess of \$50,000. Such services are only required for in house public work in excess of \$100,000.
- 4. Bid Bonds**
Bid bonds are not required by law, but may be required by local policy.

PENALTIES:

Purpose - To Enforce Compliance

1. Criminal

Section 31-7-55 - Basic Violation
Section 31-7-23 - Kickbacks
Section 31-7-13 (o) - Vendors (Invoice Splitting)

2. Civil

Section 31-7-57 - Basic Liability
Section 31-7-57 (2) - Interpreted by A. G. 2/21/89 C. R. Montgomery that a good faith vendor is entitled to payment. A court order is required.